

No. 713

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

F. W. COLER,

Appellant,

vs.

HENRY F. ALLEN, JOHN H. MCGRAW,
AS RECEIVER, AND PACIFIC NORTH-
WEST PACKING COMPANY (A
CORPORATION), AND THE PACIFIC
NORTHWEST PACKING COM-
PANY (A CORPORATION),

Appellees.

FILED
AUG 22 1901

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States
for the District of Washington,
Northern Division.

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*In the Circuit Court of the United States, for the Northern
Division of the District of Washington.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING

COMPANY (a Corporation), THE

PACIFIC NORTHWEST PACKING

COMPANY (a Corporation), AUSTIN

CLAIBORNE, W. M. WILLIAMS

and W. A. KEENE,

Defendants.

No. 872.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the
United States, for the Northern Division of the Dis-
trict of Washington, Sitting in Equity:

Your orator, who is, and at all times herein mentioned,
has been, a citizen of the State of California, brings this,
his bill of complaint, against the defendants above
named, and each of them.

Thereupon your orator complains and says:

That the defendants Austin Claiborne, W. M. Will-
iams, and W. A. Keene, are and each of them is, a citi-
zen of the State of Washington, each residing and hav-
ing his place of abode in the State of Washington,

Ia.

That your orator is, and at all the times herein mentioned has been a citizen of the State of California, residing in and having his place of abode in the said State of California.

II.

That the defendant Pacific Northwest Packing Company is, and at all the times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its place of business and doing business in the said State of Washington.

III.

That the defendant The Pacific Northwest Packing Company is, and at all the times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its place of business and doing business in the said State of Washington; that the said last-named defendant, The Pacific Northwest Packing Company, was organized as, and has become and is the successor in business of the first named defendant, Pacific Northwest Packing Company, and since its organization has become the owner of all of the property, of every kind, nature and description whatsoever, at any time owned by the defendant Pacific Northwest Packing Company, and has carried on, and is now carrying on the business formerly carried on by the defendant Pacific Northwest Packing Company, and has duly and legally assumed and become obligated to pay all of the indebtedness of every kind, nature, and description whatsoever, at any time contracted by the

said first named defendant Pacific Northwest Packing Company.

IV.

That heretofore, to wit, on the 20th day of October, 1898, the defendant Pacific Northwest Packing Company was indebted to your orator in the full and just sum of \$2,000, and that on the said date said defendant, acting through its president and its secretary, who were thereunto duly authorized, empowered, and directed by its board of trustees, duly made, executed, and delivered to your orator its promissory note, for the purpose of evidencing the said indebtedness and the terms of its payment, for the principal sum of \$2,000, dated at Seattle, Washington, October 20th, 1898, wherein and whereby it promised and agreed to pay on October 20th, 1899, after date without grace to the order of your orator, the principal sum of \$2,000, with interest at the rate of ten per cent per annum from the date thereof until paid, and providing that in case suit or action should be instituted to collect the said note, or any portion thereof, it would pay such an additional sum as the Court might adjudge reasonable, as attorneys' fees in such suit or action.

That on the said 20th day of October, 1898, the defendant Pacific Northwest Packing Company was further indebted to your orator in the full and just sum of \$13,000, and that on said date said defendant, acting through its president and secretary, who were thereunto duly authorized, empowered and directed by its board of trustees, duly made, executed and delivered to your orator its promissory note, for the purpose of evidencing the

said indebtedness and the terms of its payment, for the principal sum of \$13,000, dated at Seattle, Washington, October 20th, 1898, wherein and whereby it promised and agreed to pay, on October 20th, 1899, after date, without grace, to the order of your orator, the principal sum of \$13,000, with interest at the rate of ten per cent per annum from the date thereof until paid, and providing that in case suit or action should be instituted to collect the said note, or any portion thereof, it would pay such an additional sum as the Court might adjudge reasonable, as an attorney's fee in such suit or action. That on the said 20th day of October, 1898, the defendant Pacific Northwest Packing Company, acting as aforesaid by and through its president and secretary, who were thereunto duly authorized, empowered, and directed by its board of trustees, duly made, executed, signed, sealed, acknowledged, and delivered to your orator, for the purpose of securing the payment of the promissory notes hereinabove described, its indenture of mortgage, wherein and whereby it granted, bargained, sold, aliened, released, conveyed, confirmed and mortgaged unto your orator, and unto his heirs, executors, administrators and assigns, all of the following described property, to wit:

A certain lease dated the 14th day of May, 1898, made by the State of Washington to said defendant Pacific Northwest Packing Company, whereby the State of Washington leases to the said defendant a certain portion of the harbor area in front of blocks 88 1-2 and 89, in the town of Blaine, beginning at the west corner of block 89, Blaine tide lands, on inner harbor line, thence south 26 degrees, 56 minutes east, 181.5 feet, south 16

degrees, 49 minutes east, 66.2 feet, being all the harbor area lying westerly of said frontage between the inner and outer harbor lines, and which property is situated in Whatcom County, State of Washington, and also the wharf, cannery buildings, erections and all other structures on said above-described leased premises, and also all the right, title and interest the said defendant has in or to that certain piling, roadway or approach to the wharf and other structures above mentioned from the main upland to said wharf and other structures, which said approach connects said wharf and other structures with the upland, also the entire canning, packing and operating plant of said defendant situated in, on, or about said above-described premises and consisting of the following described personal property, to wit:

1 steel lye kettle.	8 fish trucks.
2,026 can trays.	4 topping tables.
4 testing tanks.	2 salting tables.
4 pair lobster scales.	3 drain tables.
1 post drill.	250 feet rubber hose.
4 mending tables.	3 bundles tissue paper.
6 soldering irons.	100 lbs. bar copper.
8 washing-tanks.	1 ton salt.
14 filling tables.	1,668,000 labels.
4 weighing tables.	4 dories.
1 fresh water washing-tank.	4 patented steam boxes complete with fittings.
6 bathroom low trucks.	2 soldering machines complete, bricked in.
1 steamboat truck.	2 adjustable can chutes.
8 lacquer vats.	2 rotary crimpers.
20 testing tubes.	1 can conveyer, 10 inches.
98 soldering irons.	
4 butcher tables.	

1 can conveyor, 4 inches.	4 steel retorts, complete with fittings.
1 set Gang fish knives.	2 acid machines, complete.
1 grind-stone.	1 Letson-Burpee washing-machine.
1 steam pump brass lined.	1 Hanthorn washing-machine.
1 air pump.	1 rotary fish cutter.
1 pressure gauge.	1 fish elevator.
1 relief valve.	1 steam-engine, with fittings.
12 extra oil tips.	1 galvanized iron air-tank.
1 box ball and cock.	6 double-mouthed coal oil fire pots.
2 blacksmith's vices.	12 lever handle stopcocks.
28 retort cars.	12 charcoal fire pots.
1 solder mold.	12 extra air tips.
4 turntables.	1 blacksmith's anvil and forge.
10 fish boxes.	1 blacksmith's sledge hammer.
37 bundles tissue paper.	381 retort coolers.
7 tons solder.	150 feet overhead track complete, with travelers and tackle.
30 carboys acid.	3 testing tanks.
323,000 salmon cans.	
6 scows.	
1 brick-yard boiler built in brick.	

All shafting, belting, pulleys, piping and all other personal property of every kind or character situated in, on or about any of the above-described premises.

That in said indenture of mortgage it was particularly recited and agreed that the above and foregoing more particular description of personal property contained in said indenture of mortgage was not intended to limit the lien of the said mortgage to said property only, but that it was the intention of the defendant Pacific Northwest Packing Company that all other personal property which

might not be particularly described in said indenture of mortgage, but which was or should be used in connection with or in the enjoyment of the cannery plant of the defendant, was intended to be and should be covered by the said indenture of mortgage, in like manner as though it were also particularly described therein.

That in said indenture of mortgage it was further covenanted and agreed that your orator should have and hold all and singular the said property, and every part and parcel thereof, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and also all the rents, issues and profits arising therefrom, and all the easements, franchises, and privileges connected therewith or appertaining thereto, unto your orator, and unto his heirs, executors, administrators or assigns, to his and their own benefit and behoof forever.

That in said indenture of mortgage it was particularly recited that the same was intended as a mortgage to secure the payment of the sum of \$15,000, and interest thereon at the rate of ten per cent per annum from the 20th day of October, 1898, the same being the loan evidenced by the two promissory notes hereinabove described, for \$2,000 and \$13,000, respectively.

That in said indenture of mortgage it was further provided that if the said defendant should well and truly pay the said notes, and all principal and interest thereon at their maturity, according to their tenor, and should meanwhile promptly pay all taxes which might be assessed or levied upon the property above described and

mortgaged, or intended so to be, and should keep the buildings, structures, fixtures, and improvements thereon, and all of the property above described or on the premises above described, or used in connection therewith, insured in responsible fire insurance companies to be approved by the mortgagee, in a sum not less than seventeen thousand dollars, the loss, if any, to be paid to the mortgagee, his heirs, executors, administrators, and assigns, and should promptly pay all premiums which might be required to keep said property so insured, and should pay and discharge promptly all expenses of taking care of and of operating and of keeping in good repair all of the property above described and thereby mortgaged, or intended so to be, and should observe and perform all of the things in said indenture provided to be observed and performed on its part, then the said indenture should be void, but otherwise, and until all of such payments should be fully paid, the said indenture should stand as a mortgage for the full payment of the principal and interest of all of said indebtedness, and of the premiums to effect and keep in force the insurance on the property mortgaged, or intended so to be, and the taxes thereon, and all assessments thereon, and of all reasonable costs and expenses which might be incurred in caring for said property, and in keeping the same in repair.

And it was further provided in said indenture of mortgage that if the defendant Pacific Northwest Packing Company should fail to promptly pay the taxes and assessments which might be assessed or levied upon said

property, or upon any part thereof, or should fail or neglect at any time to pay the premiums required for keeping the same insured, as in said indenture specified, or should fail or neglect to pay the said indebtedness, or to pay any installment of interest thereon, or in case your orator should at any time consider his security for said indebtedness insufficient, or his debt insecure, then and in any of said events it should be lawful for your orator, and the said defendant did in said indenture expressly authorize and empower your orator in such event to immediately foreclose the said mortgage, and to cause the whole or any part of said property to be sold, or so much thereof as might be necessary to pay the costs and expenses of such sale, and of such foreclosure, the taxes and assessments upon said property, the insurance premiums and the indebtedness in said indenture provided for and remaining unpaid at the time of foreclosure and sale, and also a reasonable fee for the attorneys or counsel representing your orator in the suit or action which he should prosecute to foreclose said mortgage, rendering the surplus, if any there should be, whether of property or of money, to the said defendant, its successors and assigns.

That in said indenture of mortgage it was further provided that any sums which your orator might advance or pay for discharging any taxes assessed or levied upon any of the said mortgaged property or any part thereof, or by way of premiums to keep said property insured, should be secured by the said mortgage, and should bear interest from the dates of payment at the rate of ten per cent per annum.

That in said indenture of mortgage it was further provided that should your orator for any reason find it necessary to institute a suit or action to foreclose the said mortgage, there should be appointed, at the option of your orator, a receiver to take charge of and to take possession of all of the mortgaged property, and to care for and keep the same in repair and to operate the packing plant now thereon, if in the judgment of your orator or of the Court having jurisdiction of such suit, it should be advantageous, necessary or expedient so to do, and that the costs, charges, fees, expense, compensation and disbursements of such receiver should be a charge and lien on the said mortgaged property, and the payment of the same, and the whole thereof should be secured by the said mortgage in like manner as the mortgage debt; and that in addition thereto, and that in addition to the mortgage debt and the sums which should have been paid by your orator, your orator in such suit in addition to the costs, expenses, and disbursements of such suit should be entitled to recover a reasonable sum for the compensation of the attorneys, solicitors or counsel representing him in such suit, the same to be fixed by the Court, and that such sum should be a part of the costs and expenses, and be made a lien upon the mortgaged property in any judgment which should be recovered in such suit or action, and that the said indenture of mortgage should be held as security for the payment of the same.

That in said indenture of mortgage it was further covenanted and agreed that in case the proceeds of the prop-

erty thereby mortgaged, or intended so to be, should be insufficient to pay and discharge all of the sums secured thereby, that then the said defendant should, and it did in said indenture expressly covenant and agree to immediately pay to your orator the residue of such indebtedness so remaining unpaid, and for such purpose, and with such object in view, and in order to more fully protect your orator in the premises, said defendant did expressly agree to waive, and did waive, all provisions in its favor contained in section 5888a of the laws of the State of Washington as compiled and annotated by the Honorable R. A. Ballinger.

That the said indenture of mortgage was signed by Pacific Northwest Packing Company by Wm. C. McKee, its president, and that the corporate seal of the said defendant was imprinted upon the said indenture of mortgage, and the execution of the said mortgage and the sealing thereof were duly attested by Harwood Morgan, secretary of the said defendant, all in the presence of two witnesses who subscribed their names as witnesses to the execution thereof to the said mortgage. That United States internal revenue documentary stamps, duly canceled in the manner prescribed by law, and to the full amount required by law, were attached to the said indenture of mortgage. That the execution of the said mortgage was duly and legally acknowledged by the president and secretary of the said defendant before a notary public in and for the State of Washington, duly commissioned and sworn, in all respects in accordance with the requirements of the laws of the State of Wash-

ington for the acknowledgment of mortgages upon real property, and the said acknowledgment was duly certified to in writing upon the said indenture of mortgage by the said notary public, and his certification thereof was attested by the notarial seal of the said notary upon the said indenture of mortgage. That at the time of and as a part of the execution of the said mortgage, the said president and secretary of the said defendant duly took and subscribed an oath before a notary public in and for the State of Washington, to the effect that the said indenture of mortgage was made in good faith, and for an actual existing indebtedness, and was not made with any design to hinder, delay or defraud any creditor or creditors, which oath was duly attested by the notary public before whom the same was taken, over his signature and notarial seal.

That thereafter, to wit, on the 20th day of October, 1898, the said indenture of mortgage was duly filed for record in the office of the auditor of Whatcom county, Washington, and was there recorded in the manner prescribed by law, at page 513 of volume 29 of the records of Real Estate Mortgages of said county, and at page 200 of volume G of the Chattel Mortgage Records of said county.

V.

That for the purpose of securing the note hereinabove described, dated October 20th, 1898, for the principal sum of \$2,000, the said defendant Pacific Northwest Packing Company, acting through its president and secretary thereunto duly authorized, empowered and di-

rected by its board of trustees, did, on the 20th day of October, 1898, duly make, execute, acknowledge, swear to and deliver to your orator a certain indenture of mortgage, wherein it mortgaged to your orator the vessel called "Albert Lea," together with the mast, bowsprit, boat, anchors, cables, chains, rigging, tackle, apparel, furniture, and all other necessaries thereunto appertaining and belonging. That from the said indenture of mortgage it appears that the register of the said vessel is No. 152, and that the official number of said vessel is 106,609. That in the said indenture of mortgage it is expressly stipulated that the same is made to secure the payment of a promissory note for the principal sum of \$2,000, hereinabove described, with interest and attorneys' fees as therein provided, and that in case default shall be made in such payments, or in any of such payments, or if default shall be made in the prompt and faithful performance of any of the covenants in said mortgage contained, that then your orator shall be entitled to take possession of the said vessel, and all of her appurtenances, wherever found, and to sell and convey the same, or so much thereof as may be necessary to satisfy the said debt, interest and reasonable expenses, after first giving notice of twenty days, to be given by publication in some newspaper published in Whatcom county, Washington, and to retain the same out of the proceeds of such sale, the surplus, if any, to belong to and be returned to the said defendant or its successors.

That the said indenture of mortgage was signed by the said defendant Pacific Northwest Packing Company,

by Wm. C. McKee, as president, and the corporate seal of the said defendant was imprinted upon said mortgage, and the execution and sealing thereof were duly attested by Harwood Morgan, secretary of said defendant, and the execution and sealing of said mortgage was witnessed by two witnesses, who subscribed their names upon said mortgages as attesting witnesses to the execution thereof; and the execution of the said mortgage was duly and legally acknowledged by the president and secretary of the said defendant on the said 20th day of October, 1898, before a notary public in and for the State of Washington, residing at New Whatcom, Washington, and the said acknowledgment was duly certified in writing upon the said mortgage by the said notary public over his hand and notarial seal.

That at the time of the execution of said mortgage, the president and secretary of the said defendant took and subscribed an oath before a notary public in and for the State of Washington, residing at New Whatcom in said State, to the effect that the said mortgage was made in good faith, and for an actual, existing indebtedness, and without any design to hinder or delay or defraud any creditor or creditors, and that the said oath was duly certified upon said indenture of mortgage, by the said notary, over his hand and notarial seal.

That the said indenture of mortgage was thereafter and on the 22d day of October, 1898, filed for record in the collector's office of the District of Port Townsend, and there recorded and now there of record at page 78 of book 5 of Mortgages.

VI.

That heretofore, and on, to wit, the 11th day of May, 1900, the defendant The Pacific Northwest Packing Company was indebted to your orator in the full and just sum of \$25,734.00, and that on said date the said defendant The Pacific Northwest Packing Company, acting through its president and its secretary, who were thereunto duly authorized, empowered and directed by its board of trustees, for the purpose of evidencing the said indebtedness and the terms of its payment, duly made, executed and delivered to your orator its promissory note for the principal sum of \$25,734.00, dated at Seattle, Washington, May 11, 1900, wherein and whereby it promised and agreed to pay, on demand, to the order of your orator, after date, without grace, the principal sum of \$25,734.00, with interest at the rate of ten per cent per annum from the date thereof until paid, and providing that in case suit or action should be instituted to collect the said note, or any portion thereof, it would pay such an additional sum as the Court might adjudge reasonable, as attorneys' fees in such suit or action.

That on the said 11th day of May, 1900, your orator, acting wholly and solely at the instance and request of the said defendant The Pacific Northwest Packing Company, promised and agreed, to and with the said defendant The Pacific Northwest Packing Company, that he would thereafter, and on, to wit, the 15th day of May, 1900, advance and loan to the said defendant, to be used in its business, the further sum of \$6,687.50; and the said defendant on the said day, for the purpose of evidencing

the said loan so to be made and the terms of the payment thereof, and acting through its president and secretary, who were thereunto duly authorized, empowered and directed by its board of trustees, made, executed and delivered to your orator its certain promissory note in writing, for the principal sum of \$6,687.50, dated at Seattle, Washington, May 15th, 1900, wherein and whereby the said defendant promised and agreed to pay to your orator, on demand, after date, without grace, the principal sum of \$6,687.50, with interest thereon at the rate of ten per cent per annum from date until paid, and with like provisions regarding attorneys' fees as contained in the note in this paragraph first above mentioned.

That on the said 11th day of May, A. D. 1900, the said defendant The Pacific Northwest Packing Company, acting, as aforesaid, by and through its president and secretary, who were thereunto duly authorized, empowered, and directed by its board of trustees, duly made, executed, signed, sealed, acknowledged and delivered to your orator, for the purpose of securing the payment of the promissory notes hereinabove in this paragraph described, and for the purpose of securing the payment to your orator of further sums to be loaned and advanced to the said defendant by your orator, and for the other purposes therein described, its indenture of mortgage, wherein and whereby it granted, bargained, sold, aliened, released, conveyed and confirmed and mortgaged unto your orator, and unto his heirs, executors, administrators and assigns, all of the following described property, to wit:

A certain lease, dated the 12th day of June, 1899, made by the State of Washington to Pacific Northwest Packing Company, a corporation organized under the laws of the State of Washington, of which corporation the said defendant The Pacific Northwest Packing Company is the successor, of a certain portion of the harbor area in front of blocks 88 1-2 and 89, in the town of Blaine, beginning at the west corner of block 89, Blaine tide lands, on inner harbor line; thence south 26 degrees 46 minutes east one hundred eighty-one and 8-10 (181.8) feet, south sixteen degrees (16 deg.) forty-nine minutes (49 minutes) east, sixty-six and 2-10 (66.2) feet, being all the harbor area lying westerly of said frontage between the inner and outer harbor lines, and which property is situated in Whatcom county, State of Washington, and also the wharf, cannery buildings, erections and all other structures on said above-described leased premises, and also all the right, title, and interest the said defendant The Pacific Northwest Packing Company has in or to that certain piling, roadway or approach to the wharf and other structures above mentioned from the main upland to said wharf and other structures, which said approach connects said wharf and other structures with the upland, also the entire canning, packing and operating plant of said The Pacific Northwest Packing Company, situated in, on, and about said above-described premises, and particularly the following described personal property, to wit:

- | | |
|--|---|
| 1 steel lye kettle. | 1 No. 4 can conveyor. |
| 2026 can trays. | 1 set Gang fish knives. |
| 4 testing tanks. | 1 grindstone. |
| 4 pair lobster scales. | 1 steam pump brass lined. |
| 1 Post drill. | 1 air pump. |
| 4 mending tables. | 1 pressure gauge. |
| 6 soldering irons. | 1 relief valve. |
| 8 washing tanks. | 12 extra oil tips. |
| 14 filling tables. | 1 box ball and cock. |
| 4 weighing tables. | 2 blacksmith's vices. |
| 3 drain tables. | 28 retort cars. |
| 250 feet rubber hose. | 1 solder mold. |
| 21 scows. | 4 turn tables. |
| 1 brickyard boiler—built in
brick. | 2 acid machines complete. |
| 4 patented steam boxes, com-
plete with fittings. | 1 Letson-Burpee washing ma-
chine. |
| 1 fresh water washing tank. | 1 Hanthorn washing machine. |
| 6 bath room low trucks. | 1 rotary fish cutter. |
| 1 steamboat truck. | 1 fish elevator. |
| 8 lacquer vats. | 1 steam engine with fittings. |
| 20 testing tubes. | 1 galvanized iron air tank. |
| 98 soldering irons. | 6 double-mouthed coal oil fire
pots. |
| 4 butcher tables. | 12 lever handle stop cocks. |
| 8 fish trucks. | 12 charcoal fire pots. |
| 4 topping tables. | 12 extra air tips. |
| 2 salting tables. | 1 blacksmith's anvil and
forge. |
| 10 fish boxes. | 1 blacksmith's sledge ham-
mer. |
| 2,500,000 labels. | 381 retort coolers. |
| 4 dories. | 150 feet overhead track com-
plete with travelers and
tackle. |
| 2 soldering machines complete,
bricked in. | 3 testing tanks. |
| 2 adjustable can chutes. | |
| 2 rotary crimpers. | |
| 1 No. 10 can conveyor. | |

All tissue paper, solder, bar copper, acid, salt and tin plate now upon the above described premises, or thereafter during the life of this mortgage to be brought upon said premises by the said defendant The Pacific Northwest Packing Company, and all cans now upon the said premises, or hereafter to be brought or manufactured there, all fish hereafter bought or caught by said The Pacific Northwest Packing Company both before and after packing.

All shafting, belting, pulleys, piping and all other personal property, of every kind and character, situated in or about any of the above-described premises.

That in said indenture of mortgage it was particularly recited and agreed that the above and foregoing more particular description of personal property contained in said indenture of mortgage was not intended to limit the lien of the said mortgage to said property only, but that it was the intention of the said defendant that all other personal property which might not be particularly described in said indenture of mortgage, but which was or should be used in connection with or in the enjoyment of the cannery plant of the said defendant, was intended to be covered by the said indenture of mortgage, in like manner as though it were also particularly described therein.

That in said indenture of mortgage it was further covenanted and agreed that your orator should have and hold all and singular the said property, and every part and parcel thereof, together with all and singular the tenements, hereditaments, and appurtenances thereunto

belonging, or in anywise appertaining, and also all the rents, issues, and profits arising therefrom, and all the easements, franchises, and privileges connected therewith or appertaining thereto, unto your orator, and unto his heirs, executors, administrators, or assigns, to his and their own benefit and behoof forever.

That in said indenture of mortgage it was particularly recited that the same was intended as a mortgage, to secure the payment of the sum of \$25,734, with interest thereon at the rate of ten per cent per annum from the 11th day of May, A. D. 1900, the same being the loan evidenced by the promissory note in this paragraph first above referred to, and as a mortgage to secure the further sum of \$6,687.50, with interest thereon from the 15th day of May, 1900, being the loan to be made, as hereinabove recited, and evidenced by the promissory note in this paragraph secondly hereinabove described.

That in said indenture of mortgage it was further particularly recited that the same was further intended as a mortgage to secure any advances which your orator might make to the defendant other than the advance of \$6,687.50 above specified, between the 11th day of May, 1900, and the 15th day of July, 1900, with interest thereon from the date of any such advancement until paid, at the rate of ten per cent per annum, such additional advances, however, not to exceed in all the sum of \$10,000.

That in said indenture of mortgage it was further provided that if the said defendant The Pacific Northwest Packing Company should well and truly pay the

said notes, and all principal and interest thereon, at their maturity, and any such further advances as your orator might make, as specified in said mortgage, and within the limitations therein specified, with interest thereon as provided in said indenture, and should meanwhile promptly pay all taxes which should be levied or assessed upon the property above described, and should keep the buildings, structures, and fixtures, and all improvements thereon, and all of the property above described, or used in connection therewith, insured in responsible insurance companies to be approved by your orator, in a sum not less than \$45,000, loss, if any, payable to your orator, and should promptly pay all premiums which might be required to keep said property so insured; and should pay and discharge promptly all expenses of taking care of and of operating and of keeping in good order and repair all of the property described in said mortgage, or intended so to be, and should observe and perform all of the things in said indenture provided to be observed and performed on its part, then said indenture should be void; but otherwise, and until all of such payments should be fully paid, the said indenture should stand as a mortgage for the full payment of the principal and interest of all of said indebtedness, and of the premiums to effect and continue in force the insurance on the property mortgaged, or intended so to be, and the taxes thereon, and all assessments thereon, and of all reasonable costs and expenses which might be incurred in caring for said property, and in keeping the same in repair.

And it was further provided in said indenture that if the defendant should fail to promptly pay the taxes and assessments which might be assessed or levied upon said property, or upon any part thereof, or should fail or neglect, at any time, to pay the premiums required for keeping the same insured, as in said indenture specified, or should fail or neglect to pay the said indebtedness, or to pay any installment of interest thereon, or in case your orator should, at any time, consider his security for said indebtedness insufficient, or his debt insecure, then and in any of said events it should be lawful for your orator, and the said defendant The Pacific Northwest Packing Company did in said indenture expressly authorize and empower your orator in such event to immediately foreclose the said mortgage, and to cause the whole or any part of said property to be sold, or so much thereof to be sold as might be necessary to pay the costs and expenses of such sale, and of such foreclosure, the taxes and assessments upon said property, the insurance premiums, and the indebtedness in said indenture provided for and remaining unpaid at the time of foreclosure and sale, and also a reasonable fee for the attorneys or counsel representing your orator in the suit or action which he should prosecute to foreclose said mortgage, rendering the surplus, if any there should be, whether of property or of money, to the said defendant, its successors or assigns.

That in the said indenture of mortgage it was further provided that any sums which your orator might advance or pay for discharging any taxes assessed or levied

upon any of the said mortgaged property, or any part thereof, or by way of premiums to keep said property insured, should be secured by the said mortgage, and should draw interest from the dates of payment at the rate of ten per cent per annum.

That in said indenture of mortgage it was further provided that should your orator for any reason find it necessary to institute a suit or action to foreclose the said mortgage, there should be appointed at the option of your orator a receiver to take charge of and to take possession of all of the mortgaged property, and to care for and keep the same in repair, and to operate the packing plant now thereon, if in the judgment of your orator or of the Court having jurisdiction of such suit it should be advantageous, necessary, or expedient so to do, and that the costs, charges, fees, expenses, compensation and disbursements of such receiver should be a charge and lien on the said mortgaged property, and the payment of the same, and the whole thereof, should be secured in like manner as the mortgage debt, and that in addition thereto, and in addition to the mortgage debt and the sums which should have been paid by your orator, in such suit, your orator, in addition to the costs, expenses and disbursements of such suit, should be entitled to recover a reasonable sum for the compensation of the attorneys, solicitors or counsel representing him in such suit, the same to be fixed by the Court, and that such sum should be taxed as part of the costs and disbursements, and be made a lien upon the mortgaged property in any judgment which should be recovered in such suit or action,

and that the said indenture of mortgage should be held as security for the payment of the same.

That in said indenture of mortgage it was further provided that in case the proceeds of the property thereby mortgaged, or intended so to be, should be insufficient to pay and discharge all of the sums secured thereby, then the said defendant The Pacific Northwest Packing Company should, and it did in said indenture expressly covenant and agree, to immediately pay to your orator the residue of such indebtedness so remaining unpaid; and for such purpose, and with such object in view, and in order to more fully protect your orator in the premises, the said defendant did expressly agree to waive, and did waive, all provisions in its favor contained in section 5888a of the laws of the State of Washington, as compiled and annotated by the Honorable R. A. Balingier.

That the said indenture of mortgage was signed by The Pacific Northwest Packing Company, by Wm. C. McKee, its president, and that the corporate seal of the said defendant was imprinted upon the said indenture of mortgage, and the execution of the said mortgage and the sealing thereof was duly attested by Harwood Morgan, secretary of the said defendant, all in the presence of two witnesses, who subscribed their names as witnesses to the execution thereof to the said mortgage.

That United States internal revenue documentary stamps, duly canceled in the manner prescribed by law, and to the full amount required by law, were attached to the said indenture of mortgage.

That the execution of the said mortgage was duly and legally acknowledged by the president and secretary of the said defendant before a notary public in and for the State of Washington, duly commissioned and sworn, in all respects in accordance with the requirements of the laws of the State of Washington for the acknowledgment of mortgages upon real property, and the said acknowledgment was duly certified to in writing upon the said indenture of mortgage by the said notary public, and his certification thereof was attested by the notarial seal of the said notary upon the said indenture of mortgage.

That at the time of and as a part of the execution of the said mortgage, the said president and secretary of the said defendant duly took and subscribed an oath, before a notary public in and for the State of Washington, to the effect that the said indenture of mortgage was made in good faith and for an actual, existing indebtedness, and was made without any design to hinder, delay, or defraud any creditor or creditors, which oath was duly attested by the notary public before whom the same was taken, over his signature and notarial seal.

That thereafter, and on the 14th day of May, 1900, the said indenture of mortgage was duly filed for record in the office of the auditor of Whatcom county, and was there recorded in the manner prescribed by law at page 248, of volume 31, of the Records of Real Estate Mortgages of said county, and at page 448 of volume G of the Chattel Mortgage Records of said county.

VII.

That after the execution and delivery of the last hereinabove described mortgage, made by The Pacific Northwest Packing Company to your orator, your orator, at the special instance and request of the said defendant The Pacific Northwest Packing Company, on, to wit, the 12th day of May, 1900, loaned to the said defendant the sum of \$5,475, as a part of the advances provided for in said mortgage; and on the said day, the said defendant acting through its president and secretary, who were thereunto duly authorized, empowered and directed, by a resolution of the board of trustees of the said defendant, duly made, executed and delivered to your orator the promissory note of the said defendant, dated Seattle, Washington, May 12th, 1900, wherein and whereby the said defendant promised and agreed to pay, to the order of your orator, on demand after date, with interest thereon at the rate of ten per cent per annum from date until paid, the sum of \$5,475. That to the said promissory note were attached United States documentary revenue stamps, duly canceled in the manner prescribed by law, for the full amount required by law.

That thereafter, to wit, on the 1st day of June, 1900, your orator, at the special instance and request of the said defendant The Pacific Northwest Packing Company, loaned to said defendant the sum of \$3,000, as a part of the advances provided for in said mortgage; and on the said day the said defendant, acting through its president and secretary, who were thereunto duly authorized, empowered, and directed, by a resolution of the board of

trustees of the said defendant, duly made, executed and delivered to your orator the promissory note of the said defendant, dated Seattle, Washington, June 1st, 1900, wherein and whereby the said defendant promised and agreed to pay, to the order of your orator, on demand after date, with interest thereon at the rate of ten per cent per annum from date until paid, the sum of \$3,000. That to the said promissory note were attached United States documentary revenue stamps, duly canceled in the manner prescribed by law, for the full amount required by law.

That thereafter, to wit, on the 12th day of June, 1900, your orator, at the special instance and request of the said defendant The Pacific Northwest Packing Company, loaned to said defendant the sum of \$1,799.16, as a part of the advances provided for in said mortgage; and on the said day, the said defendant, acting through its president and secretary who were thereunto duly authorized, empowered and directed, by a resolution of the board of trustees of the said defendant, duly made, executed and delivered to your orator the promissory note of the said defendant, dated Seattle, Washington, June 12th, 1900, wherein and whereby the said defendant promised and agreed to pay, to the order of your orator, on demand after date, the sum of \$1,799.16, with interest thereon at the rate of ten per cent per annum from date until paid. That to the said promissory note were attached United States documentary revenue stamps, duly canceled in the manner prescribed by law, for the full amount required by law.

VIIIa.

That on, to wit, the 11th day of May, 1900, the defendant The Pacific Northwest Packing Company, as further and additional security to your orator for the payment of all of the indebtedness mentioned and described and contemplated in the indenture of mortgage made by the said defendant to your orator on the 11th day of May, 1900, caused to be transferred and assigned to Austin Claiborne, as trustee for your orator and the said defendant, those certain fishing rights or licenses evidenced by State Fishing Licenses Nos. 208 and 127, and issued by the Fish Commissioner of the State of Washington to Harwood Morgan and E. G. J. McDonald, respectively. That the terms of the trust upon which said licenses were transferred and assigned to the said defendant Austin Claiborne, were that the same, and all rights and privileges thereon or arising thereunder, should be held by the said Austin Claiborne, as trustee, until all of the indebtedness mentioned and described in the said mortgage should have been paid to your orator, and when said indebtedness had been so paid, should be retransferred and assigned to the said Harwood Morgan and the said E. G. J. McDonald. That the said defendant Austin Claiborne still holds the said licenses under said assignment and said trust.

VIIIb.

That on, to wit, the 14th day of August, 1900, the defendant The Pacific Northwest Packing Company, for the purpose of securing unto your orator the payment of all indebtedness, of every kind, nature and description then

due and owing, or thereafter to become due and owing, and for the purpose of securing all loans and advances which might after said date be made by your orator to the said defendant, caused to be transferred and assigned, in trust, to L. C. Gilman, those certain fishing licenses evidenced by certificates Nos. 1896, 1840 and 1816; and upon the same day, and for the same purpose, caused to be assigned to W. M. Williams that certain fishing privilege or license, evidenced by certificate No. 2252.

That the terms of said trust were as follows: An undivided one-half of the said fishing license should be held in trust by the said trustees, as security for the payment to your orator of all indebtedness then due or to become due from said defendant The Pacific Northwest Packing Company, and for the payment of all loans or advances which might, after said date, be made by your orator to the said defendant, and the said undivided one-half of said licenses to be, upon the payment of said indebtedness, or sooner, if directed by your orator, conveyed to the said defendant The Pacific Northwest Packing Company; the other one-half of the said fishing licenses to be held in trust for one L. H. Griffin, the owner thereof.

That thereafter, and on, to wit, the 7th day of August, 1900, the said L. C. Gilman obtained from the Fish Commissioner of the State of Washington renewals of the said fishing licenses Nos. 1816 and 1840, and procured from the said Commissioner new licenses in lieu thereof, license No. 1839 being issued for the original license No. 1816, and license No. 1838 being issued for original

license No. 1840. That the said new licenses so obtained by the said L. C. Gilman were obtained and held by him upon the same trusts as the said original licenses had been received and held by him, until, to wit, the 30th day of August, 1900, when the said Gilman, with the knowledge and consent of all of the persons interested in said fishing licenses and said trust transferred the said new licenses Nos. 1838 and 1839, and the above-described license No. 1896, upon the same trust as above mentioned, to the defendant W. A. Keene. That the said defendant W. A. Keene accepted the said transfers and assignment of the said licenses and the trust imposed thereon, and now holds the said licenses upon the same trusts as originally created by the assignment to the said L. C. Gilman.

IX.

That the said defendant The Pacific Northwest Packing Company has failed and refused to pay taxes levied upon the property described in the mortgage dated May 11, 1900, amounting to the sum of \$385.67, and in order to prevent the seizure of the said mortgaged property, your orator has been obliged to pay, and did pay on the 20th day of August, 1900, the said taxes, amounting to the sum of \$385.67, and hereby claims the same to be secured by said mortgage.

That the said defendant has failed and refused to pay the necessary premiums to procure and keep in force insurance upon the said property, as specified and agreed in said mortgage, and your orator has been obliged to pay and has paid premiums upon such insurance aggre-

gating the sum of \$1,245.45, and hereby claims the same, with interest thereon, from the respective dates of payment, to be secured by said mortgage.

X.

That no part of the indebtedness mentioned and described in the three indentures of mortgage hereinabove described, made by the defendant The Pacific Northwest Packing Company, to your orator, of date October 20th, 1898, and May 11th, 1900, or mentioned and described in any of the promissory notes hereinabove described, made on and subsequent to the 11th day of May, has been paid, although your orator has frequently demanded payment thereof.

That no part of the taxes or insurance premiums paid by your orator has been paid by said defendant The Pacific Northwest Packing Company, although the payment thereof has been frequently demanded.

That your orator considers his security for the payment of the indebtedness mentioned and described in the three hereinabove mentioned mortgages to be insufficient, and considers that all of the indebtedness secured by the said mortgages is insecure, and by reason of the failure of the said defendant to pay the said indebtedness, or to pay the said taxes or insurance premiums, or any part thereof, and by reason of the insufficiency of the security given to your orator by the said defendant, and by reason of the insecurity of the indebtedness secured by the said mortgages, your orator has elected, and does hereby elect, to foreclose the said mortgages.

above mentioned and described, and of all of the rights and privileges to which your orator is or may be entitled under and by virtue of the assignments of the fishing licenses hereinabove described, and of all the fishing nets and traps, and fishing sites and locations which are or may be held and operated under the said fishing licenses, and all of them, and will by its order place said receiver in possession of all of the said property, and in the enjoyment of all of the said fishing rights and licenses, and in the possession of all fishing sites and locations which are or may be held and operated under the said licenses, or any of them, and will, from time to time, make such orders in reference thereto as will fully protect your orator in all the rights secured to him by the said mortgages, and by the said assignments of said fishing licenses, and that by the order of his appointment the said receiver be permitted to continue the business now carried on by the said defendant The Pacific Northwest Packing Company, in such manner as will be for the best interests of all persons interested therein, and in the success thereof.

Second.

That upon the trial of this action this Court will determine the amount due to your orator from the defendant The Pacific Northwest Packing Company, and that your orator shall then have judgment against the said defendant for the amount so found to be due, and for the additional sum of five thousand dollars as an attorney's fee in this action.

Third.

That upon the trial of this action this Court will ascertain and declare what portion of the indebtedness found to be due from the defendant The Pacific Northwest Packing Company to your orator is secured by the mortgages and assignments hereinabove described, and that this Court will thereupon, by its decree, establish the said mortgages as valid, first, and prior liens upon all of the property therein described, and said assignments as valid assignments of the said fishing licenses, and will direct a sale of all of such property, in accordance with law and the practice of this Court, and that the proceeds of said sale or sales be applied to the payment of the amounts found to be due and secured by the said mortgages and said assignments, with all costs and interest thereon, and such reasonable compensation as this Court shall fix for the solicitors and attorneys of your orator employed for the foreclosure of said mortgages.

Fourth.

That upon the making of such sale or sales the defendants, and each of them, and all persons claiming by, through or under them, or either of them, may be forever barred and foreclosed of all right or equity of redemption of, in, or to the said property, excepting only such right or equity of redemption as is provided by the laws of the State of Washington.

Fifth.

That your orator may have such other and further and general relief as may seem to your Honors just and equitable.

Sixth.

May it please your Honors to grant unto your orator a writ of subpoena, issuing out of and under the seal of this Honorable Court, and directed to the said defendants above named, and each of them, commanding the said defendants, and each of them, on a day certain to be therein named, and under a certain penalty therein to be prescribed, to be and appear before this Honorable Court, then and there to answer all and singular the premises (but not under oath, an answer under oath being expressly waived), and to stand and perform and abide by such order, direction, and decree as may be made against them, or either of them, in the premises, as shall seem meet and agreeable to equity.

And your orator will ever pray.

Dated at Seattle, King county, State of Washington, this 8th day of September, 1900.

HENRY F. ALLEN.

PRESTON, CARR & GILMAN,

Solicitors for Complainant.

E. M. CARR,

Of Counsel.

United States of America, }
District of Washington. } ss.

Henry F. Allen, being first duly sworn, on oath deposes and says that he is one of the solicitors for the complainant in the above-entitled action; that he makes this verification for and on behalf of the complainant, because complainant is now without, and is a nonresident of, said District of Washington; that he has heard

the foregoing bill of complaint read, knows the contents thereof, and believes the same to be true.

HENRY F. ALLEN,

Subscribed and sworn to before me this 8th day of September, 1900.

[Seal]

R. M. HOPKINS,

Deputy Clerk United States Circuit Court, District of Washington.

[Endorsed]: Bill of Complaint. Filed this 8th day of September, 1900. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the Circuit Court of the United States, for the Northern Division of the District of Washington.

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING COMPANY (a Corporation), and THE PACIFIC NORTHWEST PACKING COMPANY (a Corporation),

Defendants.

No. 872.

Order Appointing Receiver.

Upon reading and filing the bill of complaint of the complainant herein, Henry F. Allen, and the motion of

the said complainant for the appointment of a receiver herein; and it appearing to the Court that good and sufficient grounds exist for the appointment of a receiver herein, without notice, and that John H. McGraw, is a suitable person to be appointed such receiver:

It is here and now ordered that John H. McGraw be, and he is hereby, appointed receiver herein.

It is further ordered that the said John H. McGraw, receiver, before entering upon the discharge of his duties as such receiver, make, execute, and deliver to the clerk of this Court his bond in the sum of \$5,000, with a surety or sureties to be approved by the clerk or deputy clerk of this Court, conditioned for the faithful discharge of his duties as receiver, and for his obedience to all orders made upon him by this Court, and that he take and subscribe an oath as such receiver in the usual form.

It is further ordered that upon the execution, approval and filing of the bond above required, and upon the filing of the oath of office above required, the said receiver forthwith take into his possession all of the mortgaged property described in the bill of complaint herein, wherever and in whosoever possession the same may be found; and that the said receiver, until the further orders of this Court, conduct and carry on the business of catching, buying, butchering, canning, shipping and selling salmon now being carried on by the defendant The Pacific Northwest Packing Company, in such manner as shall be to the best interests of all persons therein concerned and as shall be directed by this Court.

Dated at Seattle, in the District of Washington, this 8th day of September, 1900.

C. H. HANFORD,
Judge.

[Endorsed]: Order Appointing Receiver. Filed this 8th day of September, 1900. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), and THE
PACIFIC NORTHWEST PACKING
COMPANY (a Corporation) et al.,
Defendants.

No. 872.

Order of Court Containing Receiver, etc.

This cause came on for hearing, in open court, on the 15th day of October, 1900, upon the motion of the defendant The Pacific Northwest Packing Company for an order directing the discharge of John H. McGraw, theretofore appointed receiver of the property described in the complainant's bill of complaint herein, and also upon the application of the complainant for an order upon the

said defendant requiring it to show cause, if cause it had, before this Court, at a time to be fixed by an order of this Court, why the order made herein on the 8th day of September, 1900, appointing John H. McGraw receiver of the mortgaged property described in the complainant's bill of complaint herein should not be in all respects confirmed, and the appointment of said John H. McGraw as receiver of the said mortgaged property continued. The complainant appeared by his solicitors Messrs. Preston, Carr & Gilman, and the defendant The Pacific Northwest Packing Company appeared specially for the purpose of contesting said motions only by its solicitor, W. M. Allison, Esq., and its counsel, Messrs. Bausman, Kelleher & Emory.

Upon the application of the complainant, it was by the Court ordered, with the express consent of the defendant given in open court, that the defendant The Pacific Northwest Packing Company be and appear in this court, at the hour of two o'clock P. M. of Tuesday, the 16th day of October, A. D. 1900, and then and there show cause, if any cause it had, why the order above referred to, appointing John H. McGraw receiver of the mortgaged properties described in the complainant's bill of complaint herein, should not be in all respects confirmed, and the appointment of said John H. McGraw, as receiver of the mortgaged property described in the complainant's bill herein be continued. It was further ordered, upon the consent of the parties hereto, that the hearing of the defendant's motion for the discharge of the said receiver be continued until the same hour, to wit,

two o'clock P. M. of Tuesday, October 16th, 1900; and it was further ordered, by consent of the parties hereto, that said motion of the defendant, and the said order to show cause and the return thereto, should be heard together. The said motion and the said order to show cause came on for hearing in open court on the 16th day of October, 1900, at the hour of two o'clock P. M., complainant appearing by its solicitors, Messrs. Preston, Carr & Gilman, and the defendant appearing by its solicitors, W. B. Allison, Esq., and its counsel, Messrs. Bausman, Kelleher & Emory. The hearing proceeded, and not being finished at the Court's usual hour of adjournment, the further hearing of the said motion and said order to show cause and return thereon were continued until Thursday, the 18th day of October, 1900, at the hour of ten o'clock A. M. of said day, at which hour the parties appeared by their solicitors and counsel, as before specified, and the hearing of the said motion and of the said order to show cause was finished and was by the Court taken under advisement.

And the Court having read and fully considered all of the affidavits filed herein by the complainant and the defendant in connection with and upon the hearing of the said motion and the said order to show cause, and the files and records of said cause including the receiver's report filed herein October 15, 1900, and being fully advised as to all the facts, and having heard and considered the argument of counsel and being fully advised as to the law, does now find:

1st. That the complainant's bill of complaint herein discloses, and did at the time of its filing disclose, facts requiring the appointment of a receiver of the mortgaged property herein by this Court to be made, in order that the rights of the complainant herein should be protected and preserved.

2d. That upon the application of the complainant for the appointment of a receiver of the mortgaged property herein, sufficient facts existed and were shown to the Court to excuse the giving of notice to the defendant of the time and place of the making of said application, and sufficient facts existed and were shown to the Court to justify the Court to then appoint a receiver of the mortgaged property herein without notice to the defendant.

3d. That within an hour after the appointment of the receiver herein on the 8th day of September, A. D. 1900, the defendant, through its managing officer, Harwood Morgan, the secretary of the said company, had full notice and knowledge of the appointment of the said receiver and of the terms of his appointment, and within twenty-four hours after the said appointment, Wm. C. McKee, the president, and E. G. J. McDonald, the vice-president of the said company, had full notice and knowledge of the appointment of the said receiver, and of the terms of his appointment; that the said Morgan, McKee and McDonald are, and at all times have been, stockholders and officers of the defendant; that from the day following the appointment of the said receiver, and until a short time before the hearing of the said motion and the said order to show cause, the said McKee, presi-

dent of the defendant, was in the employ of the receiver, assisting him in the business of his receivership at an agreed salary of seventy-five dollars per month, and the said McDonald, during all of said time, voluntarily rendered services to the said receiver in the conduct of the said receiver's business, without compensation; that during all of said time, the said Morgan, secretary of the defendant, and the said McKee president of the said company, were in frequent conferences with the solicitors of the complainant regarding the progress of negotiations which were pending for a settlement of the difficulties in which the defendant had become involved; that after the appointment of the said receiver, and prior to the filing of the defendant's motion for the discharge of the said receiver, the complainant, at the special request of the officers of the defendant, advanced sums of money aggregating the sum of \$7,071.26, to John H. McGraw, the receiver herein, to be paid out and which were paid out by the said receiver for the protection and preservation of the property of the defendant covered by the mortgages to the complainant described in his bill of complaint herein.

4th. That the defendant has wholly failed to show any cause why the receiver herein should be removed, and has wholly failed to show any prejudice or damage which has resulted to it by the failure of the complainant to give notice of its application for the appointment of a receiver herein.

5th. That the defendant, in an action pending in the Superior Court of the State of Washington, for the

County of King, in which F. W. Coler is plaintiff, and the said defendant is defendant, has, since the commencement of this action, in legal effect, confessed its insolvency and consented to the appointment of a receiver of all of its property.

6th. That owing to the unexpected and wholly unparalleled failure of the usual run of salmon in the vicinity of the defendants' cannery during the past salmon season, the defendant has been, since the first day of July, 1900, wholly without pecuniary means with which to carry on its business and preserve and protect its property, excepting the moneys which have been advanced to it by the complainant, as shown by his bill of complaint herein, in the expectation that said salmon run was only delayed, and except such moneys as the complainant has advanced to the receiver, as shown by the affidavits on file herein.

7th. That good and sufficient grounds exist for the confirmation of the order heretofore, on the 8th day of September, 1900, made herein, appointing John H. McGraw receiver of all of the mortgaged property described in the plaintiff's bill of complaint herein, and continuing said John H. McGraw as receiver of the said defendant.

Wherefore, by reason of the law and the facts, it is here and now by the Court ordered that the order of this Court heretofore made and entered herein on the 8th day of September, 1900, appointing John H. McGraw receiver of all of the mortgaged property mentioned and described and referred to in the complainant's bill of

complaint herein, be and the same is in all respects ratified and confirmed, and that the said John H. McGraw be, and he is hereby, continued as receiver of all of the said mortgaged property under his said original order of appointment and this order of confirmation, until the further order of this Court, and the motion of said defendant The Pacific Northwest Packing Company to vacate and set aside said order of Sept. 8, 1900, appointing said receiver be, and the same is hereby, denied, and exception is allowed said defendant.

Done in open court, this 25th day of October, 1900.

C. H. HANFORD,

Judge.

[Endorsed]: Order of Court. Filed this October 25, 1900. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING

COMPANY (a Corporation), THE

PACIFIC NORTHWEST PACKING

COMPANY (a Corporation), AUSTIN

CLAIBORNE, W. M. WILLIAMS,

and W. A. KEENE,

Defendants.

No. 872.

Rule Taking Bill Pro Confesso as to Certain Defendants.

It appearing to the Court that the subpoena issued in this cause was duly and regularly served upon Austin Claiborne, one of the defendants herein, on the 13th day of September, 1900, by delivering to and leaving with said Austin Claiborne, at Seattle, Washington, within said District, an attested copy of said subpoena; and that said subpoena was duly and regularly served upon said W. M. Williams and W. A. Keene, two of the defendants above named, on the 10th day of September, 1900, by delivering to and leaving with said W. M. Will-

iams and said W. A. Keene, and each of them, at Seattle, within said District, an attested copy of said subpoena; and it further appearing to the Court that while the said service was not made on either of the said defendants more than twenty days prior to the return day named in the said subpoena, it was served upon the said defendants W. M. Williams, W. A. Keene and Austin Claiborne more than twenty days prior to the November return day of this court; and it further appearing that said defendants, and each of them, have not appeared in this suit, either in person or by solicitor, and that none of said defendants named have appeared in this suit at all:

Now, therefore, on motion of Preston, Carr & Gilman, solicitors for complainant, it is ordered that the bill of complaint in said cause be taken pro confesso as to said defendants named in accordance with the rules in such cases made and provided.

Done in open court, this 22d day of December, 1900.

C. H. HANFORD,

Judge.

[Endorsed]: Rule Taking Bill Pro Confesso as to Certain Defendants. Filed in the United States Circuit Court, District of Washington. December 22, 1900. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING

COMPANY (a Corporation), THE

PACIFIC NORTHWEST PACKING

COMPANY (a Corporation), AUSTIN

CLAIBORNE, W. M. WILLIAMS,

and W. A. KEENE,

Defendants.

Order Allowing F. W. Coler to Intervene.

The motion of F. W. Coler, a judgment creditor of the defendant The Pacific Northwest Packing Company, being heard, it is

Ordered that said F. W. Coler, be and he hereby is, allowed to file his complaint in intervention in this cause and serve copies thereof upon the complainant and each of the defendants, and that the complainant and the defendants be, and they are hereby, required to answer the same according to the rules pertaining to bills of complaint.

Dated December 29th, 1900.

C. H. HANFORD,

Judge.

[Endorsed]: Order Allowing Intervention of F. W. Coler. Filed in the United States Circuit Court, District of Washington. December 31, 1900. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), THE
PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), AUSTIN
CLAIBORNE, W. M. WILLIAMS,
and W. A. KEENE,

Defendants.

Motion for Leave to Intervene.

F. W. Coler, a judgment creditor of the defendant The Pacific Northwest Packing Company, respectfully moves the Court for an order allowing him to intervene in this cause on the annexed complaint in intervention.

BAUSMAN, KELLEHER & EMORY,
Solicitors for F. W. Coler.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), THE
PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), AUSTIN
CLAIBORNE, W. M. WILLIAMS,
and W. A. KEENE,

Defendants.

Complaint in Intervention.

To the Honorable, the Judges of the Circuit Court of the
United States for the District of Washington:

Your orator, who is a citizen, resident and inhabitant
of the State of Washington, brings this his complaint in
intervention against the complainant and defendants
above named, and each of them, on behalf of himself and
of such other creditors of defendant The Pacific Northwest
Packing Company as may come into this cause and con-
tribute to its expenses, and thereupon your orator com-
plains and says:

I.

I admit each and every averment contained in paragraphs I, Ia, and II of the complainant's bill of complaint.

II.

As to paragraph III of complainant's bill of complaint I admit each and every averment therein, except that I deny that The Pacific Northwest Packing Company is now carrying on the business formerly carried on by the defendant Pacific Northwest Packing Company; and as to whether The Pacific Northwest Packing Company has in any way assumed and obligated itself to pay all the indebtedness of every kind, nature, and description of the Pacific Northwest Packing Company, I have no knowledge or information concerning either or all these averments.

III.

As to the averments contained in paragraph IV of complainant's bill of complaint, I have no knowledge or information concerning either or all of them, except that I admit that on the 20th day of October, 1898, defendant Pacific Northwest Packing Company did execute a certain mortgage to complainant Allen on the property described in that paragraph and containing the terms therein described, and I admit that this mortgage was recorded as averred in that paragraph.

IV.

As to paragraph V of complainant's bill of complaint, I admit that defendant Pacific Northwest Packing Com-

pany did execute the mortgage on the "Albert Lee" and that that mortgage was recorded as averred in that paragraph.

V.

As to paragraph VI of complainant's bill of complaint, I admit that defendant The Pacific Northwest Packing Company executed a mortgage on the property in that paragraph described and that it contained generally the terms in that paragraph described, and that it was recorded at the times and places in that paragraph described, but I have no knowledge or information concerning either or all the remaining averments of that paragraph and particularly as to whether, as in that paragraph averred, the sum of \$25,734.00, or any part thereof, was a full and just sum to be so secured by mortgage and due from defendant The Pacific Northwest Packing Company to complainant Allen; and I deny each and every averment therein to the effect that such mortgage is or was in any respect valid, and I have no knowledge or information concerning the averments that any advances of any kind had been or were to be made under that mortgage, or that any note purporting to be secured by that mortgage were or had been executed to the complainant or ought to have been executed to the complainant, or that any or all such notes were in any respect valid.

VI.

As to paragraph VII of complainant's bill of complaint I have no knowledge or information as to any of the averments in that paragraph set out.

VII.

As to paragraphs VIIIa, VIIIb, IX, X, XI and XII, I have no knowledge or information concerning any or all the averments in either of those paragraphs set out.

VIII.

As to paragraph XIII of complainant's bill of complaint, I deny that five thousand dollars is a reasonable attorney's fee in this suit for complainant's counsel, or that anything more than twenty-five hundred dollars is a reasonable attorney's fee.

And this intervenor, waiving none of his denials or defenses as hereinbefore set forth and praying to have the benefit of the same as if herein specially pleaded, further complaining says:

I.

Your orator is a citizen, resident, and inhabitant of the State of Washington; complainant Allen is and at all the times hereinafter mentioned was a citizen, resident, and inhabitant of the State of California; defendants Pacific Northwest Packing Company, and The Pacific Northwest Packing Company, and each of them, are now and were at all the times hereinafter mentioned corporations organized and existing under the laws of the State of Washington, with the principal place of business of each at Seattle, King County, Washington; that the defendants, Austin Claiborne, W. M. Williams, and W. A. Keene, and each of them, are now and were at all the times hereinafter mentioned residents, citizens, and inhabitants of the State of Washington.

II.

The Seattle National Bank at all the times herein mentioned was and now is a corporation organized and existing under the laws of the United States relating to the creation of national banks and is a resident, citizen, and inhabitant of the State of Washington, and was at all the times herein mentioned.

III.

On the 17th day of February, 1900, defendant Pacific Northwest Packing Company, in consideration of one thousand dollars to it loaned by The Seattle National Bank aforesaid, made, executed, and delivered to that bank its certain promissory note in that amount, bearing that date, and on demand, which note was duly stamped with United States revenue stamps as required by law. Thereafter the defendant The Pacific Northwest Packing Company assumed and agreed to pay this note; and thereafter The Seattle National Bank endorsed, transferred, and delivered it to your orator, F. W. Coler.

IV.

Your orator subsequently brought suit upon this note in the Superior Court of King County, State of Washington, and such proceedings were had in that suit, that on the 19th day of December, 1900; judgment was rendered in your orator's favor and against the present defendant The Pacific Northwest Packing Company, in the sum of ten hundred and eighty-five dollars. No part of this judgment has ever been paid and your orator is now the owner and holder thereof.

V.

Your orator further complaining says, that on the — day of September, 1900, upon the filing of the bill of complaint by complainant Allen in this cause, a receiver, John H. McGraw, was appointed of all the assets covered by the alleged mortgage of the complainant, and that the said McGraw is now in the full possession of those assets under the orders of this court. That these assets are all of the property of either or both the defendant packing companies, and that by reason of such possession by the receiver McGraw this intervenor complainant has no means of realizing upon his indebtedness and any execution issued by him would be idle, frivolous, and nugatory, and that except as your orator shall find relief in this cause there is no property whatsoever of the defendant The Pacific Northwest Packing Company, from which anything can be realized upon the judgment above set forth.

VI.

Your orator further complaining say, that the defendants Pacific Northwest Packing Company and The Pacific Northwest Packing Company are, each and both of them, wholly insolvent; that the liabilities of each grossly exceed the assets of each; that each of them was insolvent at all times in the month of May, 1900, and at the time of the giving of the mortgage to complainant Allen as set out in paragraph VI of complainant's bill of complaint. That at the time of giving this mortgage the defendant The Pacific Northwest Packing Company had reached a point where its debts were greater than its property,

where it could not pay in the ordinary course, where its business was no longer profitable, and when it ought to be wound up and its assets distributed. The mortgage referred to in paragraph VI of complainant's bill of complaint was and is an unlawful preference, under the laws of the State of Washington, and such as could not be given lawfully by a debtor in the then financial condition of defendant The Pacific Northwest Packing Company.

VII.

Your orator, further complaining, says that he is, as a judgment creditor of defendant The Pacific Northwest Packing Company, entitled to share equally and ratably with complainant Allen, and any other creditor who may come into this action, in the assets of defendant The Pacific Northwest Packing Company, free and clear of the mortgage set out in paragraph VI of complainant's bill of complaint, and that that mortgage is as to him, and as to such other creditors as may come in, illegal and void.

(1) Forasmuch as your orator, this intervenor, can have no adequate relief, except in this court, and to that end, therefore, that the complainant Allen and the above defendants may, if they can, show why your orator should not have the relief hereby prayed and make a full disclosure and discovery of all of the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived.

(2) That the mortgage of defendant The Pacific Northwest Packing Company set out in paragraph VI of the bill of complaint of complainant Allen herein be declared, as to your orator, the intervenor, and as to such other creditors as may come into this cause, null and void.

(3) That the assets of the defendant The Pacific Northwest Packing Company be declared a trust fund for the creditors of that defendant and be distributed among them equally and ratably.

(4) That complainant Allen be prohibited and enjoined from in any way collecting, foreclosing, or proceeding upon the mortgage referred to.

(5) That your orator may have such other and further relief as to the Court may seem meet and just in the premises.

(6) May it please your Honor to grant unto your orator not only the relief hereinabove prayed for, but also a writ of subpoena to the complainant Allen and to the above-named defendants herein, commanding them, and each of them, on a day certain to appear and answer unto this complaint in intervention and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

BAUSMAN, KELLEHER & EMORY,

Solicitors for Intervenor F. W. Coler.

State of Washington, }
 County of King. } ss.

F. W. Coler, being first duly sworn, on oath says that he is the intervenor named in the foregoing complaint in intervention; that he has read the same, knows the contents thereof and believes the same to be true.

F. W. COLER.

Subscribed and sworn to before me this 29th day of December, 1900.

[Notarial Seal] DANIEL KELLEHER,
 Notary Public in and for the State of Washington, Resid-
 ing at Seattle, Wash.

[Endorsed]: Complaint in Intervention. Filed in the United States Circuit Court, District of Washington. December 31, 1900. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), THE PA-
CIFIC NORTHWEST PACKING
COMPANY (a Corporation), AUSTIN
CLAIBORNE, W. M. WILLIAMS
and W. A. KEENE,

Defendants.

No. 872.

**Answer of Defendant The Pacific Northwest Packing Com-
pany.**

To the Honorable the Judges of the above-entitled Court:

Defendant The Pacific Northwest Packing Company, says, in answer to complainant's bill of complaint as the same has heretofore been amended after demurrer, as follows:

I.

This defendant admits the averments of each and every paragraph of the bill of complaint down to, but not including, paragraph IX.

II.

As to paragraph IX of the bill of complaint, this defendant admits the averments contained in the first division thereof; but as to the averments contained in the second division—that relating to insurance—this defendant denies that it has any knowledge or information. It admits that certain sums have been paid by complainant on account of insurance, but it has no knowledge or information concerning whether the amounts so paid by complainant was the sum therein named or not.

III.

As to paragraph X of complainant's bill of complaint, this defendant denies that none of the indebtedness therein referred to has been paid and avers the truth to be that sundry payments have been made which have not been credited on these notes, which payments will appear more certainly by an accounting hereinafter prayed for.

Further answering paragraph X of the bill of complaint, this defendant denies that there existed at the time of the filing of this foreclosure any insecurity to the lien thereof justifying foreclosure at that time.

IV.

As to paragraph XI of the bill of complaint, this defendant answers and says: It admits that the companies therein named, including this defendant, were engaged at the time of the foreclosure in the business therein described; it denies that the fall run of salmon was just beginning at that time; and denies that there was any ne-

cessity for the appointment of a receiver for the operation of the cannery at that time.

V.

As to paragraph XII, it admits that in the event of foreclosure by this suit, if the same shall have been properly begun, complainant is entitled to a reasonable attorney's fee.

VI.

It denies that the sum of five thousand dollars is a reasonable attorney's fee, and avers the fact to be that it is an unreasonable attorney's fee, and that anything more than twenty-five hundred dollars is an unreasonable attorney's fee.

And this defendant, answering further, waiving none of its denials or defenses as hereinbefore set forth and praying to have the benefit of the same as if herein specially pleaded, says:

That the indebtedness owed by it to complainant as narrated in the complainant's bill of complaint arose out of a relation between this defendant and complainant Allen by virtue of which complainant Allen was to advance, and did advance, divers sums of money from time to time, being the sums set out in the bill of complaint, to this defendant and was to receive, and did receive, in return the output of this defendant's cannery. Complainant Allen was at that time interested in a company in San Francisco, called the Griffith-Durney Company, of which he was president; and in consideration of the advances made by complainant Allen to this defendant it was agreed that the Griffith-Durney Company should, as

aforesaid, receive the entire pack or output of this defendant and receive a commission of five per cent for handling the same. This arrangement was exclusive as to the output of this defendant's pack. Complainant Allen was also to select the underwriters for the insurance, and did so select the underwriters for the insurance, upon this defendant's property. And for the further advantage of complainant Allen, a bookkeeper was sent by him from San Francisco to supervise permanently and conduct the accounts of this defendant, all of which was a part of the understanding between complainant Allen and this defendant; and during a large part of the time when the indebtedness arose in favor of complainant Allen from this defendant this bookkeeper was in charge of the accounts of this defendant. In consequence of the intimate business relations thus established between complainant and this defendant, and the great variety of accounts arising out of insurance, taxes, commissions, shipments, and the like, this defendant avers that at this time it is just and equitable that an accounting be had between complainant and this defendant. This defendant denies that the amount is due on the divers notes and accounts claimed in the bill of complaint by complainant, but is unable to say at this time just how much is due. It admits that there is a liability in some amount, but denies that it is in the amount named, and avers the difference to be some thousands of dollars more favorable to this defendant than appears in the bill. At the time when the receiver was appointed the same being unexpected to this defendant, no accounting had been had be-

tween the parties and none has been had since. This defendant avers that a very great part of the information respecting those accounts is in the possession of the complainant Allen *along, the transactions* relating to many of the same having occurred in the city of San Francisco and through himself as agent for the receipt and sale of the pack and the placing of the insurance. And as to this defendant's transactions at its own offices in the State of Washington, these also were to a large extent under the control of complainant through its confidential bookkeeper aforesaid in charge of the accounts, for which reason and of the consequence of the confusion of affairs resulting from the change from possession of all the parties to that of a receiver this defendant is left in that situation in which it cannot rightfully apprise itself, and does not now know, its exact degree of liability to complainant.

Wherefore this defendant prays that the Court order an accounting between complainant and this defendant, and that the bill of complaint be dismissed as to so much thereof as shall be found not due and owing by this defendant.

THE PACIFIC NORTHWEST PACKING COMPANY,

By HARWOOD MORGAN,

Its Secretary.

BAUSMAN, KELLEHER & EMORY,

Solicitors for Defendant, The Pacific Northwest Packing Company.

Due service of within answer this 31st day of December, 1900, duly admitted.

PRESTON, CARR & GILMAN,
Attorneys for Complainant.

[Endorsed]: Answer of defendant The Pacific Northwest Packing Company. Filed in the United States Circuit Court, District of Washington. December 31, 1900. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

*In the Circuit Court of the United States, for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), THE PA-
CIFIC NORTHWEST PACKING
COMPANY (a Corporation), AUSTIN
CLAIBORNE, W. M. WILLIAMS
and W. A. KEENE,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Demurrer.

Demurrer of the above-named complainant, Henry F. Allen, to the complaint in intervention filed in this cause by F. W. Coler.

This complainant, by protestation, not confessing or acknowledging any or all of the matters or things in the said complaint in intervention contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said complaint in intervention, for that the same does not state such a case, or contain any statement of any facts or of any matter of equity entitling said F. W. Coler to intervene herein, or entitling the said F. W. Coler to any relief whatsoever against this complainant.

Wherefore the complainant prays judgment of this Court whether he shall be compelled to further answer said complaint in intervention, and he further prays to be dismissed therefrom with costs.

PRESTON, CARR & GILMAN,
Solicitors for Complainant.

I, E. M. Carr, of counsel for complainant, Henry F. Allen, do hereby certify that the foregoing demurrer to the complaint in intervention of F. W. Coler is, in my opinion, well taken and well founded in law and that the said demurrer is not interposed for delay.

E. M. CARR.

Subscribed and sworn to before me this, the 10th day of January, 1901.

[Notarial Seal] W. A. KEENE,
Notary Public in and for the State of Washington, Residing at Seattle.

Received copy of the within demurrer and service of same admitted this 10th day of January, 1901.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Intervenor.

[Endorsed]: Demurrer. Filed in the United States Circuit Court, District of Washington. January 10, 1901. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

IN EQUITY.

HENRY F. ALLEN,	Complainant,	} No. 872.
vs.		
PACIFIC NORTHWEST PACKING	Defendants.	
COMPANY et al.,		
F. W. COLER,	Intervenor.	

Order Sustaining Demurrer.

This cause came on duly and regularly to be heard on this 14th day of January, 1901, upon the demurrer of the complainant to the complaint of intervention filed herein by F. W. Coler. The complainant appeared by his solicitors, Preston, Carr & Gilman, and the said intervenor appeared by his solicitors, Bausman, Kelleher & Emory.

After hearing argument of counsel, and being fully advised in the premises, it appeared to the Court that the said demurrer was well grounded in law.

Wherefore it is by the Court here and now ordered that the demurrer of the complainant herein to the complaint of intervention filed herein by F. W. Coler be, and the same is hereby, sustained.

Dated at Seattle in the District of Washington, this 14th day of January, 1901.

C. H. HANFORD,
Judge.

To the ruling of the Court sustaining said demurrer the intervenor, F. W. Coler, duly excepted and his exceptions were allowed. Opportunity was offered by the Court to the said intervenor to plead further, but the said intervenor in open court declined to plead further and elected to stand upon his said complaint.

C. H. HANFORD,
Judge.

Form approved.

BAUSMAN, KELLEHER & EMORY.

[Endorsed]: Order. Filed this 14th day of January, 1901. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY et al.,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Judgment.

This cause came on duly and regularly for hearing before the Court on this 14th day of January, 1901, upon the complaint in intervention filed herein by F. W. Coler and the demurrer thereto of the complainant, Henry F. Allen. The complainant appeared by his solicitors, Preston, Carr & Gilman, and the said intervenor appeared by his solicitors, Bausman, Kelleher & Emory. The said demurrer having been by the Court sustained, and the said intervenor having declined to plead further and elected to stand upon the said complaint, complainant in open court

moved for judgment upon the said complaint in intervention, and the said demurrer, which was granted.

Wherefore it is by the Court here and now ordered and adjudged that the complaint in intervention heretofore filed herein by F. W. Coler be, and the same is hereby, dismissed; and that complainant be not required to further answer the said complaint.

Dated at Seattle, in the District of Washington, this 14th day of January, 1901.

C. H. HANFORD,
Judge.

To the entry of the above judgment the intervenor, F. W. Coler, duly excepted and his exceptions were allowed.

C. H. HANFORD,
Judge.

Form approved.

BAUSMAN, KELLEHER & EMORY.

[Endorsed]: Judgment. Filed this 14th day of January, 1901. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,	Complainant,	} No. 872.
vs.		
PACIFIC NORTHWEST PACKING	Defendants.	
COMPANY (a Corporation), THE		
PACIFIC NORTHWEST PACKING		
COMPANY (a Corporation), AUSTIN		
CLAIBORNE, W. M. WILLIAMS,		
and W. A. KEENE,		
	Intervenor.	
F. W. COLER,		

Petition for Appeal and Order Allowing Same.

The above-named intervenor, F. W. Coler, conceiving himself aggrieved by the judgment entered in this cause on the 14th day of January, 1901, does hereby appeal from it to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that this, his appeal, may be allowed, and that a transcript of the records and proceedings and papers upon which that judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated May 24, 1901.

BAUSMAN & KELLEHER,
Solicitors for Intervenor, F. W. Coler.

And now on this 24th day of May, 1901, it is ordered that an appeal be allowed as prayed for.

C. H. HANFORD,

District Judge Presiding in the Circuit Court.

[Endorsed]: Petition for Appeal and Order Allowing Same. Filed in the United States Circuit Court, District of Washington. May 24, 1901. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING COMPANY (a Corporation), THE PACIFIC NORTHWEST PACKING COMPANY (a Corporation), AUSTIN CLAIBORNE, W. M. WILLIAMS, and W. A. KEENE,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Assignment of Errors.

Comes now Intervenor F. W. Coler and says that in the records and proceedings in this cause and in the judg-

ment entered in it January 14th, 1901, there is manifest error, as follows:

I.

The Court erred in sustaining complainant's demurrer to intervenor's complaint in intervention, and in dismissing that complaint upon intervenor's electing to stand thereon after demurrer sustained.

Wherefore, the intervenor, F. W. Coler, prays that the judgment of the Circuit Court of the United States for the District of Washington may be reversed.

BAUSMAN & KELLEHER,
Solicitors for Intervenor F. W. Coler.

[Endorsed]: Assignment of Errors. Filed in the United States Circuit Court, District of Washington. May 24, 1901. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING COMPANY (a Corporation), THE PACIFIC NORTHWEST PACKING COMPANY (a Corporation), AUSTIN CLAIBORNE, W. M. WILLIAMS, and W. A. KEENE,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Bond on Appeal.

Know all men by these presents, that we, F. W. Coler, as principal, and S. Foster Kelley, as surety, are held and firmly bound, jointly and severally, unto Henry F. Allen, the complainant named above, to John H. McGraw, the receiver in this cause, and to defendants Pacific Northwest Packing Company and The Pacific Northwest Packing Company, and to each of them, in the penal sum of five hundred dollars (\$500.00), to each or either or all of them to be paid.

Witness our hands this 24th day of May, 1901.

The condition of this bond is as follows: The above-named intervenor, F. W. Coler, has commenced an appeal to the United States Circuit Court of Appeals for the

Ninth Circuit in this cause from the judgment entered in it on the 14th day of January, 1901:

Therefore, if the said F. W. Coler shall prosecute such appeal to effect and answer all costs, if it shall fail so to do, then this obligation shall be null and void; otherwise shall remain in full force and effect.

F. W. COLER,
S. FOSTER KELLEY.

County of King,
District and State of Washington } ss.

Personally appeared before me, the undersigned, a notary public in and for the State of Washington, S. Foster Kelley, to me personally known to be the surety named in the foregoing bond, and who on oath deposes and states that he is worth the sum of five hundred dollars over and above all just debts and liabilities, and exclusive of property exempt from execution, in property within this State, and that he is a resident, householder, and freeholder within the district of Washington.

Witness my hand and official seal this 24th day of May, 1901.

[Notarial Seal] FREDERICK BAUSMAN,
Notary Public in and for the State of Washington, Residing at Seattle.

This bond approved May 24th, 1901.

C. H. HANFORD,
Judge.

[Endorsed]: Bond on Appeal. Filed in the United States Circuit Court, District of Washington. May 24, 1901. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING COMPANY (a Corporation), THE PACIFIC NORTHWEST PACKING COMPANY (a Corporation), AUSTIN CLAIBORNE, W. M. WILLIAMS, and W. A. KEENE,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Citation on Appeal (Copy).

United States of America, }
District of Washington. } ss.

To Henry F. Allen, Complainant Above Named, John H. McGraw, as Receiver Appointed in the Above-entitled Cause, and Defendants Pacific Northwest Packing Company and The Pacific Northwest Packing Company, Greeting:

You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, in that Circuit, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the District of Washington, in which F. W. Coler is appellant and you and each of you are respondents, to show cause, if any there be, why the decree rendered against appellant in that appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 24th day of May, 1901.

[Seal U. S. Circuit Court] C. H. HANFORD,
District Judge Presiding in the Circuit Court.

Service of copy of this citation acknowledged this 24th day of May, 1901.

PRESTON, CARR & GILMAN,
Solicitors for Henry F. Allen, and John H. McGraw, as
Receiver in the Above-entitled cause.

[Endorsed]: Citation on Appeal. Filed in the United States Circuit Court, District of Washington. May 25, 1901. A. Reeves Ayres, Clerk. A. N. Moore, Deputy.

*In the Circuit Court of the United States for the District of
Washington, Northern Division.*

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), THE
PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), AUSTIN
CLAIBORNE, W. M. WILLIAMS,
and W. A. KEENE,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Praeceptum for Transcript.

To the Clerk of the Above Court:

You will please prepare a transcript for use on appeal in the above cause, and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, including in the transcript the following:

1. Complainant's bill of complaint.
2. Order appointing McGraw receiver.
3. Order denying motion to vacate receiver's appointment.
4. Order allowing intervention of Coler.

5. Bill of intervention of Coler.
6. Answer of defendant The Pacific Northwest Packing Company.
7. Demurrer to intervenor Coler's complaint.
8. Order sustaining demurrer to intervention of Coler, with exception thereto.
9. Judgment dismissing intervention of Coler, with exception thereto.
10. Petition for appeal and its allowance.
11. Assignment of errors.
12. Bond on appeal.
13. Citation on appeal.
14. Order taking bill pro confesso against defendants Williams, Claiborne, and Keene.

BAUSMAN & KELLEHER,
Solicitors for Intervenor Coler.

[Endorsed]: Praeceptum for Transcript. Filed in the United States Circuit Court, District of Washington. May 24, 1901. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

IN EQUITY.

HENRY F. ALLEN,	}	No. 872.	
			Complainant,
vs.			
THE PACIFIC NORTHWEST PACK- ING COMPANY et al.,			Defendants.
F. W. COLER,			
		Intervenor.	

Clerk's Certificate to Transcript.

United States of America, }
District of Washington. } ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the District of Washington, do hereby certify the foregoing sixty-six (66) typewritten pages, numbered from one (1) to sixty-six (66), both inclusive, to contain in themselves, and not by reference, a complete record and transcript of the final record and of all the papers, exhibits and proceedings necessary to the hearing of the appeal of F. W. Coler, as intervenor in a case numbered 872 in this court, wherein Henry F. Allen is complainant and Pacific Northwest Packing Company and others are defendants, and in which said F. W. Coler is intervenor.

I further certify that the costs of preparing and certifying the foregoing transcript is the sum of \$20.15, and that said sum has been paid to me by the appellant F. W. Coler. No opinion has been given or filed in said cause in respect of the intervention of F. W. Coler.

In witness whereof I have hereunto set my hand and affixed the seal of said Circuit Court, at my office in the city of Seattle, in said District this 17th day of June, 1901.

[Seal] A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the
District of Washington.

By R. M. Hopkins,
Deputy Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

*In the Circuit Court of the United States for the District of
Washington, Northern Division.*

IN EQUITY.

HENRY F. ALLEN,

Complainant,

vs.

PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), THE
PACIFIC NORTHWEST PACKING
COMPANY (a Corporation), AUSTIN
CLAIBORNE, W. M. WILLIAMS,
and W. A. KEENE,

Defendants.

F. W. COLER,

Intervenor.

No. 872.

Citation on Appeal (Original).

United States of America, }
District of Washington. } ss.

To Henry F. Allen, Complainant Above Named, John H. McGraw, as Receiver Appointed in the Above-en-

titled Cause, and Defendants Pacific Northwest Packing Company and The Pacific Northwest Packing Company, Greeting:

You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, in that Circuit, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the District of Washington, in which F. W. Coler is appellant and you and each of you are respondents, to show cause, if any there be, why the decree rendered against appellant in that appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 24 day of May, 1901.

[Seal]

C. H. HANFORD,

District Judge Presiding in the Circuit Court.

Service of copy of this citation acknowledged this 24 day of May, 1901.

PRESTON, CARR & GILMAN,
Solicitors for Henry F. Allen, and John H. McGraw, as
Receiver in the Above-entitled Cause.

[Endorsed]: No. 872. In the Circuit Court of the United States, District of Washington. Henry F. Allen, Plaintiff, vs. Pacific Northwest Packing Company et al., De-

fendants. Citation on Appeal. Filed in the United States Circuit Court, District of Washington. May 25, 1901. A. Reeves Ayres, Clerk. A. N. Moore, Deputy. Bausman, Kelleher & Emory, Attorneys for F. W. Coler. Rooms 626, 627 and 628 Bailey Building, Seattle, Washington.

[Endorsed]: No 713. In the United States Circuit Court of Appeals for the Ninth Circuit. F. W. Coler, Appellant, vs. Henry F. Allen, John H. McGraw, as Receiver, and Pacific Northwest Packing Company (a Corporation), and The Pacific Northwest Packing Company (a Corporation), Appellees. Transcript of Record. Appeal from the Circuit Court of the United States for the District of Washington, Northern Division.

Filed June 20, 1901.

F. D. MONCKTON,
Clerk.
By Meredith Sawyer,
Deputy Clerk.